

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON**

CHRISTOPHER BOFFOLI, an
individual,

Plaintiff,

v.

ATEMIS LLC, a Delaware limited
liability company, DOES 1-5.

Defendants.

Case No. 2:18-cv-00795

**COMPLAINT FOR COPYRIGHT
INFRINGEMENT**

DEMAND FOR JURY TRIAL

CHRISTOPHER BOFFOLI, (“Boffoli” or “Plaintiff”) hereby alleges for his complaint against ATEMIS LLC (“Atemis” or “Defendant”) upon personal information as to Plaintiff’s own activities, and upon information and belief as to the activities of others, as follows:

NATURE OF THE CASE

1. This is a claim for copyright infringement arising under the copyright laws of the United States, Title 17 of the United States Code.

JURISDICTION AND VENUE

2. This Court has exclusive subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

3. This Court has personal jurisdiction over Atemis because it conducts

1 substantial business in the State of Washington.

2 4. The claims alleged in this Complaint arise in the State of Washington
3 and the Western District of Washington and elsewhere.

4 5. Venue is appropriate pursuant to 28 U.S.C. § 1391(b)(1-3).

5 **PARTIES**

6 6. Plaintiff is an individual and resident of the Western District of
7 Washington.

8 7. Atemis is a Delaware corporation with its principal business address at
9 108 West 13th Street, Wilmington, DE 19801.

10 8. Plaintiff does not know the true names of defendants named in this
11 Complaint as Does 1 through 5 and therefore sues those defendants by such
12 fictitious names. Plaintiff will amend the Complaint to include the true names of
13 the doe Defendants and allege facts supporting their liability when Plaintiff learns
14 them through discovery. Plaintiff is informed and believes, and on that basis
15 alleges, that each of the fictitiously named defendants is responsible in some
16 manner for the acts and omissions that give rise to Plaintiff's injuries, and that the
17 Doe Defendants proximately caused Plaintiff's injuries.

18 **FACTS**

19 **A. Boffoli created copyrightable photographs and registered them with the** 20 **U.S. Copyright Office.**

21 9. Boffoli is a fine art, editorial, and commercial photographer who created
22 "Big Appetites," a series of photographs featuring tiny figures photographed
23 against real food backdrops. Big Appetites has been published in more than 100
24 countries around the world, with coverage in publications such as the New York
25 Times, Washington Post, NPR, and CBS This Morning, among many others. Fine
26 art photographs from the collection can be found in galleries and private collections
27 in the US, Canada, Europe and Asia. Boffoli is frequently hired by magazines for
28 editorial commissions and by large brands for commercial work based on the Big

1 Appetites series. Boffoli's images are also licensed for publication for books,
2 magazines, websites, and greeting cards.

3 10. Boffoli's business is based on licensing and selling photographs he
4 creates. Big Appetites photographs are currently available for purchase at fine art
5 galleries, and can also be purchased over the Internet, including through Boffoli's
6 website. Boffoli has licensed use of Big Appetites photographs to greeting card
7 companies, calendars, and others.

8 11. Boffoli registered each photograph in the Big Appetites series with the
9 U.S. Copyright Office and has Copyright Registration Nos. VAu001106484 (2011),
10 VAu001148370 (2013), VA0001948517 (2013), and VAu001198948 (2015).

11 **B. Artemis published and displayed copies of photographs from Big Appetites**
12 **without license of permission from Boffoli.**

13 12. Artemis, an Internet-based company, is the creator and developer of a
14 commercial app called "Let Eat Go."

15 13. To promote its business, Artemis maintains a social media account for
16 "Let Eat Go" called "Let Eat Go – your food partner" at
17 <https://www.facebook.com/LeteatgoApp/>.

18 14. At the end of December 2017, Boffoli discovered that Artemis was
19 displaying copies of photographs from Big Appetites on the Let Eat Go Facebook
20 page without license or permission ("Infringing Content"). Attached as Exhibit A
21 are screenshots of the Infringing Content.

22 15. On January 16, 2018, Boffoli sent Artemis a letter informing it of the
23 Infringing Content. *See* Exhibit B. After receiving no response, he sent an e-mail via
24 the web form on Artemis' site stating the reason why he was attempting contact. *See*
25 Exhibit C. Counsel for Mr. Boffoli sent a letter to Mr. Barrier on March 5, 2018
26 reiterating the facts above. *See* Exhibit D. No response was received. Counsel for
27 Mr. Boffoli also telephoned Artemis on April 2, 2018 and left a voicemail message.
28 No response was received.

CAUSE OF ACTION
COPYRIGHT INFRINGEMENT AND CONTRIBUTORY COPYRIGHT
INFRINGEMENT

16. Boffoli hereby incorporates Paragraphs 1–15 by reference.

17. Boffoli is, and at all relevant times has been, the owner of the copyright in the photographs in the Big Appetites series.

18. Each photograph in Big Appetites is copyrightable subject matter under 17 U.S.C. § 102(a)(5).

19. Boffoli has complied in all respects with the provisions of the Copyright Act and all regulations thereunder.

20. Boffoli registered the copyright in each photograph in Big Appetites with the United States Copyright Office.

21. Boffoli has the exclusive rights under 17 U.S.C. § 106 to (1) reproduce the photographs in Big Appetites, (2) prepare derivative works based on Big Appetites, (3) distribute copies of Big Appetites, and (4) display Big Appetites publicly.

22. Without the permission or consent of Boffoli, photographs from Big Appetites were reproduced, derivative works were made from, copies were distributed of, and the photographs were displayed on Atemis' Facebook page for Let Eat Go.

23. Boffoli's exclusive rights in the photographs in Big Appetites were violated.

24. Atemis induced, caused, or materially contributed to the Infringing Websites' publication.

25. Atemis had actual knowledge of the Infringing Content.

26. Atemis acted willfully.

RELIEF REQUESTED

WHEREFORE, Boffoli asks this Court to enter judgment against Defendants and Defendants' subsidiaries, affiliates, agents, employees, and all persons acting in concert or participation with them, granting the following relief:

1. Temporary and permanent injunctions preventing and restraining infringement of Big Appetites by Atemis under 17 U.S.C. § 502;

2. An order requiring the destruction of all copies made by or under the control of Atemis of the photographs in Big Appetites and all articles by which such copies may be reproduced under 17 U.S.C. § 503;

3. An award of the actual damages suffered by Boffoli as the result of Atemis's infringement plus the profits of Atemis attributable to the infringement under 17 U.S.C. § 504(b);

4. Alternatively, if Boffoli so elects, an award of statutory damages for each infringement of Big Appetites under 17 U.S.C. § 504;

5. A judgment that Atemis' infringement was willful and an increased statutory damage award under 17 U.S.C. § 504(c)(2);

6. An award of Plaintiff's full costs including a reasonable attorney's fee under 17 U.S.C. § 505; and

7. For such other and further relief as may be just and proper under the circumstances.

1 Dated: May 31, 2018

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